



**THE ATTORNEY GENERAL
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June 16, 1948

Hon. Howard D. Dodgen
Executive Secretary
Game, Fish and Oyster Commission
Austin, Texas

Attention: Hon. F. M. Cowsert

Opinion No. V-604

Re: Legality of Commercial
netting of fish in
St. Charles and Puerto
Bays.

Dear Sir:

You request an opinion on the following matter:

"Under the provisions of Article 941, Penal Code 1925, as amended by Acts 1929, 41st Leg. p. 269, ch. 119, the use of seines and nets is prohibited in St. Charles bay and Puerto Bay. In H. B. 745, Acts 1943, 48th Leg., Reg. Ses., ch. 334, p. 563, the use of any tackle then permitted in any other coastal county in the State of Texas was made legal when fishing for commercial purposes in all tidal waters of Aransas County with exceptions of passes between inland bays and the Gulf. This provision was to be in effect for two years or for the duration of the war.

"The question posed is stated as follows:
'The issue seems to be whether Art. 941 of the Penal Code, was, in effect, repealed by the legislation by the 48th Legislature taking effect in May, 1943, suspending operation of Art. 941 in the tidal waters of Aransas County.'

Chapter 334 of the Acts of the 48th Legislature (1943), R.S. p. 563, provides that it shall be in force

"Hereafter, for a period of two (2) years and for the duration of the war".

And Section 3 of the Acts is as follows:

"Providing that all laws and parts of laws in conflict, shall be suspended for a period of two (2) years or until the end of the war."

The suspension of a statute means a temporary stop for a time and involves a power which can be exercised only by the Legislature. 39 Tex. Jur., 136, Sec. 72; 59 C. J. 940, Sec. 553; 50 Am. Jur. 524, Sec. 512.

It is stated in Vol. 1, Sutherland, Statutory Construction (3rd ed. 1943) at page 516 and 518,

"The suspension of a statute is a temporary rescission of a valid legislative enactment by the execution of a later statute which is to prevail during its limited operation... And where the Legislature by a later enactment repeals the suspensory statute, a statute which has been suspended by the repealed statute is reinstated without express re-enactment."

In Texas, the Legislature has the sole "power of suspending laws in this State." Texas Constitution, Art. I, Sec. 28; McDonald v. Denton, 132 S.W. 823, 63 Tex. Civ. App. 421, writ of error denied 135 S. W. 1148, 104 Tex. 206.

The suspension of a statute is not the repeal of a statute. There is a material difference between the repeal and the suspension of a statute. A repeal puts an end to the law; it removes the law entirely. a suspension holds the law in abeyance; the law still exists but its operation is suspended for the period of time mentioned in the suspension statute. Hienssen v. State of Colorado, 23 Pac. 995, Mernaugh v. City of Orlando, (Fla.) 27 So. 34. In our opinion Chapter 334, Acts 48th Leg. did not repeal Art. 941 P. C.

It is to be noted that Chapter 334, page 563 of the Acts of the 48th Legislature, Regular Session was expressly repealed by the 49th Legislature, Acts 1945, Regular Session. Chapter 209 of Acts of the 49th Legislature, Page 289, Sec. 14, at page 290, provides:

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"for the repeal of Sec.334, Acts of the Regular Session of the 48th Legislature."

Section 1 of Chapter 273, page 431 of the 49th Legislature, Regular Session, again expressly states:

"That Chapter 334, Acts of the 48th Legislature, 1943, be, and the same is hereby repealed."

The repeal of Chapter 334 of the 48th Legislature, removes the suspension of Penal Code, Article 941, and it is again in full force and effect.

SUMMARY

Chapter 334 of the Acts of the 48th Legislature, R. S. suspending "for a period of two (2) years or for the duration of the war" certain portions of Penal Code, Art. 941, was repealed by Acts of the 49th Legislature, Chapter 209, page 289, and Chapter 273, page 431. Art. 941, Penal Code, is now in full force and effect.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

BY

David Wuntch

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APPROVED:

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